

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

RALPH DOUGLAS COX,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CIV-07-875-M
	)	
GRADY COUNTY DETENTION	)	
CENTER, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**REPORT AND RECOMMENDATION  
ON THE CLAIMS AGAINST THE  
GRADY COUNTY DETENTION CENTER**

The Plaintiff alleges violation of the Eighth Amendment at the Grady County Detention Center. The Grady County Detention Center moves for dismissal, and the Court should grant the motion based on a lack of capacity to be sued.

Dismissal is proper only if the Plaintiff fails to plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, \_\_ U.S. \_\_, 127 S. Ct. 1955, 1974 (2007). The well-pleaded factual allegations in the complaint must be accepted as true and construed in the light most favorable to the Plaintiff. *See Bryson v. City of Edmond*, 905 F.2d 1386, 1390 (10th Cir. 1990).


Capacity of the Grady County Detention Center is determined by the law of the state in which the federal district court is located. *See Fed. R. Civ. P. 17(b)*. Under Oklahoma law, “any person, corporation, partnership, or unincorporated association [has] capacity to . . . be sued in this state.” Okla. Stat. tit. 12 § 2017(B). Applying this law, the Western

District of Oklahoma has held that the Grady County Detention Center lacks the capacity to be sued.<sup>1</sup> Under this holding, the detention center lacks capacity to be sued and the Court should grant the motion to dismiss.

Mr. Cox can object to this report and recommendation. *See* 28 U.S.C. § 636(b)(1) (2000). Any such objection must be filed with the Clerk of the United States District Court. *See Haney v. Addison*, 175 F.3d 1217, 1219-20 (10th Cir. 1999). The deadline for objections is April 23, 2008. *See* W.D. Okla. LCvR 72.1. The failure to timely object would waive the Plaintiff's right to appellate review of the recommended dismissal. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

The referral is not terminated.

Entered this 3rd day of April, 2008.

  
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Robert E. Bacharach  
United States Magistrate Judge

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<sup>1</sup> *See Lee v. Grady County Detention Center*, Case No. CIV-07-773 (W.D. Okla. Feb. 6, 2008) (unpublished report and recommendation by magistrate judge), *adopted* (W.D. Okla. Mar. 4, 2008) (unpublished order by district judge).